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Office of the City Attorney

January 10, 2019

**Via CMRRR: 7017 3380 0000 8797 1364**

John Ricker  
MUCKROCK NEWS  
DEPT MR 66447  
411A Highland Ave.  
Sommerville, MA 02144-2516

**Re: Open Records Request (Our File No. 2252)**

Dear Mr. Ricker:

The City of Lubbock ("City") has received your request for information related to police cases. As some of this information may be confidential, the City has written to the Texas Attorney General, a copy of which letter is enclosed. If you wish to submit an opinion as to this matter, you may write to the Attorney General at the following address:

Honorable Ken Paxton  
Attorney General  
Open Records Division  
P. O. Box 12548  
Austin, Texas 78711-2548.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy L. Sims", is written over the typed name and title.

Amy L. Sims  
Deputy City Attorney

ALS:dm  
cc: (w/o Exhibit Encl.)  
Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-254



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Office of the City Attorney

January 10, 2019

Via CMRRR: 7017 3380 0000 8797 1357

Honorable Ken Paxton  
Attorney General  
Open Records Division  
P. O. Box 12548  
Austin, Texas 78711-2548

**Re: Public Information Decision Request (Our File No. 2252)**

Dear Mr. Paxton:

The City of Lubbock ("City") is requesting an Open Records Decision from your office as it has received a request on December 26, 2018, for certain information related to police cases, one of which the Lubbock County District Attorney's Office informed the City resulted in a conviction. The request is enclosed herein as **Exhibit A**. Please note City offices were closed January 1, 2019.

The City is requesting a decision from your office pursuant to Chapter 552 of the Texas Government Act, also known as the Public Information Act ("Act") as the requested information may be confidential. The requested information is enclosed herewith as **Exhibit B**.

The City is raising the following exceptions in its request:

Section 552.101 (exception for information considered to be confidential by law);

Section 552.108 (certain law enforcement and prosecutorial information);

Section 552.130 (exception for motor vehicle records; driver's license and license plate numbers, registration and vehicle identification numbers); and

Section 552.147 (exception for social security numbers).

**Section 552.108 (certain law enforcement and prosecutorial information)**

The City asserts that portions of this information are confidential pursuant to the terms of Section 552.108 of the Act. This section excepts from disclosure "information held by a law enforcement agency...that deals with the detection, investigation, or prosecution of crime" if the "release ...would interfere with the detection, investigation, or prosecution of crime." See Section 552.108(a)(1) of the Act.

In this instance, portions of the requested information contain evidence in pending prosecutorial matters (*see Exhibit B*). Release of this information could hurt the prosecution of the cases. The Lubbock County District Attorney's Office has also informed the City that they consider some of the cases at issue open and pending criminal prosecutions. The requested information should remain confidential while this case is still an open criminal prosecution. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975).

Further, the City asserts that portions of the requested information are also confidential pursuant to the terms of Section 552.108 of the Act. A copy of the information that may be confidential pursuant to Section 552.108(a)(2) is enclosed herewith as **Exhibit B**. Section 552.108(a)(2) of the Act excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Texas Gov't Code §552.108(a)(2). Some of the information contained in **Exhibit B** concern concluded investigations that did not result in a conviction or deferred adjudication. Therefore, the information should remain confidential. Please see also OR2000-1930, OR2000-1872, OR99-2747, and OR99-2398.

#### **Section 552.101 — Common Law Privacy**

Pursuant to Section 552.101 of the Act, some of the information may be confidential because it implicates common law privacy rights (*see Exhibit B*). Common law privacy issues are raised if the information: (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) be of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) at 685. Therefore, the information requested may be confidential if these privacy rights are at issue.

In addition, portions of the information reveal details, the release of which could be considered highly embarrassing, objectionable, distressing and harmful for the victim(s) involved. Because of the nature of the incidents described within the requested information, this information may be confidential pursuant to common law privacy (*see Exhibit B*). *See* Open Records Decision No. 339 at 2 (1982) and *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied).

#### **Section 552.101 (exception for information considered to be confidential by law; dates of birth, addresses, telephones)**

The requested information contains the dates of birth of numerous individuals within the reports (*see Exhibit B*). This information may be protected by common law privacy. This issue is raised if the information: (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) be of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) at 685. The City

is concerned that the release of this information would be an invasion of the individuals' privacy and subject him/her to possible identity theft.

In addition, **Exhibit B** contains the address and telephone numbers of the numerous individuals. This information, along with the dates of birth, would make it very easy for an identity thief to steal the identities of these people. Due to threat of identity theft, this information should be excepted from disclosure.

The Texas Supreme Court has held that the dates of birth for state employees should be excepted from disclosure. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The Court of Appeals in *Paxton v. City of Dallas*, 2015 WL 339401 (Tex. App.—Austin, May 22, 2015, pet. denied), ruled that this protection of dates of birth should be extended to apply equally to public citizens. Therefore, any dates of birth should remain confidential by law.

**Section 552.130 (exception for motor vehicle records; driver's license and license plate numbers, registration and vehicle identification numbers)**

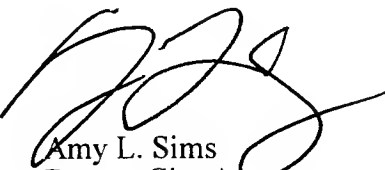
The City is raising the exception for motor vehicle records. The Act excepts driver's licenses, license plate numbers, registration and vehicle identification numbers issued by an agency of this state or another state or country from disclosure. The information includes the numerous driver's license and license plate numbers. These numbers are also protected by Section 552.130 of the Act because they are "...motor vehicle title or registration issued by an agency of this state or another state or country." *See* Section 552.130(a)(2) of the Act. As such, this information should remain confidential (*see Exhibit B*).

**Section 552.147 (exception for social security numbers)**

Pursuant to Section 552.147(a) of the Act, the social security number of a living individual is excepted from disclosure. Therefore, any and all social security numbers within the requested documents should be redacted in accordance with Section 552.147(b) of the Act (*see Exhibit B*).

Thank you very much for your consideration of these matters. Please do not hesitate to call or write if you need further information with regard to this request for a decision.

Yours truly,

  
Amy L. Sims  
Deputy City Attorney

Honorable Ken Paxton  
Attorney General  
January 10, 2019  
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ALS:dm  
Enclosures (Exhibits A and B)

cc: (w/o Exhibit Encl.)

**Via CMRRR: 7017 3380 0000 8797 1364**

John Ricker  
MUCKROCK NEWS  
DEPT MR 66447  
411A Highland Ave.  
Sommerville, MA 02144-2516

**Stacy Austin**

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**From:** Barbara Bessent  
**Sent:** Monday, December 24, 2018 5:51 PM  
**To:** LPDORR  
**Subject:** Fwd: Texas Public Information Act Request: Community Complaints about Prostitution 2018

Please see request for processing.

Thank you,  
Barb

Sent from my iPhone

Begin forwarded message:

**From:** [66447-37462288@requests.muckrock.com](mailto:66447-37462288@requests.muckrock.com)  
**Date:** December 24, 2018 at 4:22:04 PM CST  
**To:** [orr@mylubbock.us](mailto:orr@mylubbock.us)  
**Subject:** Texas Public Information Act Request: Community Complaints about Prostitution 2018

Lubbock Police Department  
Texas Public Information Act Office  
P. O. Box 2000  
Lubbock, TX 79457

December 24, 2018

To Whom It May Concern:

Pursuant to the Texas Public Information Act, I hereby request the following records:

All police reports, notes, arrests, and call logs regarding or related to complaints about prostitution in 2018.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

**RECEIVED**

**DEC 26 2018**

**LPD RECORDS**

John Ricker

Filed via [MuckRock.com](https://www.muckrock.com)

E-mail (Preferred): [66447-37462288@requests.muckrock.com](mailto:66447-37462288@requests.muckrock.com)

Upload documents directly: [https://www.muckrock.com/accounts/agency\\_login/lubbock-police-department-5234/community-complaints-about-prostitution-2018-66447/?uuid-login=53ac1bf9-75e9-48c2-8b73-dd42a0857955&email=orr%40mylubbock.us#agency-reply](https://www.muckrock.com/accounts/agency_login/lubbock-police-department-5234/community-complaints-about-prostitution-2018-66447/?uuid-login=53ac1bf9-75e9-48c2-8b73-dd42a0857955&email=orr%40mylubbock.us#agency-reply)

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News

DEPT MR 66447

411A Highland Ave

Somerville, MA 02144-2516

**PLEASE NOTE:** This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

**WARNING:** This message was received from someone outside the organization.  
It could contain harmful attachments or links to harmful web pages.